



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



STEVEN E. CHESTER
DIRECTOR

TO: All Part 201 Discussion Group Participants

FROM: Steven E. Chester, Director, Michigan Department of Environmental Quality

DATE: November 1, 2007

SUBJECT: Implementation Report and Action Plan for *Michigan's Part 201 Environmental Remediation Program Review: Final Report and Recommendations*

Thank you for your participation in the many discussion group meetings and conference calls that resulted in the development of the April 2, 2007 "Michigan's Part 201 Environmental Remediation Program Review: Final Report and Recommendations" (Final Report). Upon receipt of the Final Report, I asked the Remediation and Redevelopment Division (RRD) to review the ideas, suggestions, and recommendations to identify recommendations that:

- Can be implemented using available administrative authority;
- Can be implemented with limited legislative changes;
- Require additional discussion and effort to better develop and define the recommendation, require significant legislative changes to implement, or require resources and staff effort that cannot be supported at this time;
- Department staff cannot agree are appropriate for implementation as presented or require further staff review; and
- Should be referred to other Departments for review and action as appropriate.

The RRD response is contained in the attached "RRD Assessment of Part 201 Discussion Group Recommendations", dated October 2007. This document presents a brief summary of the RRD assessment of the recommendations presented in the Final Report, a description of actions taken to date, and, if appropriate, the next steps to be taken to implement the recommendations. An "Implementation Matrix: Part 201 Discussion Group Recommendations" is also included. The matrix summarizes each of the recommendations, identifies which of the implementation categories applied to the recommendation, and provides the tentative implementation schedule. It is clear from the matrix that Michigan Department of Environmental Quality (MDEQ) staff agree with the majority of the recommendations presented in the Final Report.

The RRD assessment indicates that many of the recommendations will require further stakeholder input. The schedule for the stakeholder processes will begin in November 2007. If you are interested in participating in any of these processes, please contact Patty Brandt at brandtp@michigan.gov or 517-373-4710. While we may need to limit direct participation to a maximum number to maintain efficiencies we will keep all parties that express an interest informed of the progress of the stakeholder process.

The MDEQ will routinely assess progress and accelerate work on recommendations as progress and additional resources allow.

All Part 201 Discussion Group Participants

Page 2

November 1, 2007

Again, I want to thank all of you who have participated in, and continue to participate in, the process to ensure the continuing effectiveness of Michigan's environmental remediation and redevelopment program.

Attachments

cc: Mr. Andrew W. Hogarth, MDEQ

Ms. Lynelle Marolf, MDEQ

Ms. Patricia Brandt, MDEQ

RRD Assessment of Part 201 Discussion Group Recommendations

October 2007

At the request of Steven E. Chester, Michigan Department of Environmental Quality (MDEQ) Director, the Remediation and Redevelopment Division (RRD) reviewed the ideas, suggestions, and recommendations presented in the April 2, 2007, "Michigan's Part 201¹ Environmental Remediation Program Review Final Report and Recommendations" (Final Report) to identify those that:

- Can be implemented using available administrative authority;
- Can be implemented with limited legislative changes;
- Require additional discussion and effort to better develop and define the recommendation, require significant legislative changes to implement, or require resources and staff effort that cannot be supported at this time;
- Department staff cannot agree are appropriate for implementation as presented or require further staff review; and
- Should be referred to other departments for review and action as appropriate.

This document summarizes the recommendations, provides the RRD assessment of the recommendations and describes, if appropriate, the next set of actions to be taken for implementation.

This document includes an "Implementation Matrix: Part 201 Discussion Group Recommendations." The matrix also summarizes each of the Final Report recommendations and identifies the RRD schedule for implementation.

Summary of Actions Taken to Date

Efforts since the release of the Final Report have resulted in the completion of tasks to implement seven recommendations and the initiation of tasks to implement 22 others. Many of these were recommendations of the Brownfield Subgroup and included the expectation that there would be additional stakeholder input. That input is occurring as part of the legislative process.

Limited staff resources prevent the ability to implement all recommendations simultaneously. We propose a sequence of activities that initiates implementation of as many of the recommendations now as possible with the goal of completing as many as possible over the next two fiscal years (FY).

This assessment identifies recommendations already implemented or initiated, and recommendations MDEQ staff can initiate and implement with available resources during the upcoming FY. Some of the recommendations are far-reaching and interact with other parts of the Natural Resources and Environmental Protection Act. Although the Final Report recommendations are specific to the Part 201 program, many also affect Part 213². The MDEQ views this as a critical opportunity to integrate the state's cleanup programs into a more streamlined and efficient framework.

¹ Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended

² Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended

Follow-up Stakeholders Process Schedule (first and second quarter FY 2008)

The following recommendations require further stakeholder input. The schedule for this input is:

November to December 2007

- Recommendations 1, 2, and 43 - 49 (Checklist and early scoping meeting pilot)
- Recommendations 51 - 55 (Evaluate the use of a model to determine if a utility corridor represents a preferential pathway)
- Recommendation 97 (The Uniform Environmental Covenants Act)

January to March 2008

- Recommendations 65 - 69 (Vapor intrusion pathway modifications not requiring statutory or rule change)
- Recommendation 79 (Owners/operators definition relative to subdivisions and condominiums)
- Recommendations 82, 83, and 87 (Contribution standard, statute of limitations language, bona fide prospective purchaser)

Anyone interested in participating in any of the identified stakeholder processes should contact Patty Brandt at brandtp@michigan.gov or 517-373-4710. While we may need to limit direct participation to a maximum number to maintain efficiencies we will keep all parties that express an interest informed of the progress of the stakeholder process.

The schedule for implementing the remaining recommendations is contained in the attached matrix. The MDEQ will routinely assess progress and accelerate work on recommendations as progress and additional resources allow.

Appendix D of the Final Report lists items the MDEQ previously proposed for discussion by the Part 201 workgroups. Some of these issues were not adequately discussed by the workgroups due to time constraints. The Department intends to pursue some of these issues in the next year to improve program efficiency and effectiveness.

The following summarizes recommendations from the Final Report which is attached for reference. The recommendations are numbered as they appear in the Final Report and the applicable page numbers from the Final Report are provided. The recommendations are sorted by how the MDEQ proposes to implement them.

RECOMMENDATIONS THAT CAN BE IMPLEMENTED USING AVAILABLE ADMINISTRATIVE AUTHORITY

Recommendations 1, and 43 - 49 (Final Report pages 8, 18-19)

Use the draft Part 201 Comprehensive Project Checklist as a tool to manage and reduce complexity. Develop a pilot test to refine the checklist and evaluate its effectiveness. Depending on effectiveness and financial resources make the completed checklists available as a source of site information on the internet.

The MDEQ will initiate a stakeholder process in FY 2008 to assist in a pilot program incorporating the checklist recommendations. The draft checklist was presented at the June 2007 Cleanup Criteria Training for consultants and other interested parties. The MDEQ requested volunteers to pilot its use. Those volunteers will be contacted for participation in the stakeholder process. Until the pilot program is complete the MDEQ suggests that private parties voluntarily use the draft checklist as a tool to identify the pathways that require action to close a site.

Recommendation 2 (Final Report page 8)

When requested and as staff and financial resources permit, use early scoping meetings to increase communications and unify expectations for as many response activities as possible.

The MDEQ currently conducts early scoping meetings when requested and when time and resources allow. Early scoping meetings are very useful for complex projects. However, the MDEQ does not currently have the resources to conduct early scoping meetings for the majority of projects. The MDEQ will incorporate early scoping meetings in the checklist pilot program described above. We will also update the Part 201 Citizen's Guide to note the opportunity for and benefit of early scoping meetings. The MDEQ highly encourages and will make resources available for early scoping meetings for brownfield redevelopment projects. The MDEQ recommended expansion of the notification requirements under the Act 381³ program specifically to increase the opportunity for early scoping meetings. See Recommendation 32 on page 7.

Recommendation 3 (Final Report page 9)

Support the MDEQ ongoing quality-control efforts to train staff in a number of skill areas with the goal of improving consistency across district and field offices and empowering staff to make decisions.

We appreciate the support for continuation of our quality control efforts such as training, the District and Field Operations Quality Review Team (FOQRT) process, and development of the Operational Memorandums. Both internal MDEQ and external training has been conducted on cleanup criteria and additional training is planned for FY 2008. A benefit of the training is more consistency in internal and external decision making. In addition, the external training should result in the submission of higher quality site investigation work plans, Due Care plans, Remedial Action Plans (RAPs), Closure Reports, and Final Assessment Reports that meet the requirements of Part 201 and Part 213. The checklist and early scoping meetings should also improve efficiency and consistency by increasing communication and clarifying expectations. Proposed changes to Part 201 program complexity should reduce the time needed for quality control efforts such as FOQRT and producing Operational Memoranda. The MDEQ views this as an ongoing process and will continue to improve efficiency and consistency as opportunities arise. Additional resources will be necessary to achieve some of these improvements.

³ Brownfield Redevelopment Financing Act, 1996 PA 381, as amended

Recommendation 4 (Final Report page 9)

Consider creating separate definitions of "Facility" for determining liability and for protecting public health. (The subgroup did not finalize this recommendation but agreed that noting the discussion was important.)

This topic is best considered within the context of comprehensive changes in the cleanup program.

Recommendation 18 (Final Report page 12)

The relevant state agencies should convene a working group of legislators, municipalities, practitioners, and other stakeholders to consider the Brownfield Redevelopment Recommendations 19-32 and, where appropriate, develop legislative amendment(s).

Legislation to amend Act 381 which addresses many of the Brownfield Subgroup recommendations has already been introduced. The MDEQ did not request introduction and it occurred without further stakeholder input. Stakeholder input is occurring as part of the legislative process. The MDEQ will evaluate the need for further legislation, and a stakeholder process, when the current legislative process concludes.

Recommendations 25 and 26 (Final Report pages 13-14)

The MDEQ and the Michigan Economic Growth Authority (MEGA) Board should adopt a revised policy, in consultation with the Michigan Department of Treasury, that: 1) defines a reasonable rate of interest as an eligible expense to be paid by school tax capture, and 2) defines and expands the circumstances in which interest will be approved as an eligible activity as part of PA 381 work plan approvals.

MDEQ staff met with Michigan Economic Development Corporation (MEDC) staff earlier this year to discuss the current interest policy and possible changes for each agency. The MDEQ recommended that school tax capture be allowed for the financing of all environmental response activities and that the MDEQ consult with MEDC on an acceptable rate of interest upon receipt of a work plan requesting interest. This issue is currently being addressed in pending legislation. Direction may be set by the legislation. The MDEQ will determine an appropriate course of action when the current legislative process concludes.

Recommendation 50 (Final Report page 19)

The MDEQ should finalize the Strategy for Part 201/213 Facilities with Contaminated Groundwater Venting to MS4 National Pollution Discharge Elimination System (NPDES) Permitted Storm Sewers to allow a mixing zone where venting groundwater enters a NPDES Permitted Storm Sewer.

The MDEQ has implemented this recommendation. The MDEQ announced this change to the RRD list server subscribers on June 8, 2007 and presented it at the June 2007 RRD Cleanup Criteria Training.

Recommendations 51 - 55 (Final Report pages 20-21)

The MDEQ should develop a generic and site-specific model to determine whether a utility corridor represents a preferential pathway resulting in groundwater contamination impacting surface waters. The MDEQ should develop similar models for other pathways.

The MDEQ will schedule additional discussion with stakeholders regarding the appropriate form and use of such models during FY 2008.

Recommendations 56 - 58 (Final Report pages 21-22)

The MDEQ should develop guidance to clarify when an isolated release may be remediated without further involvement of the rest of the property.

The MDEQ has identified circumstances where the existing Part 201 Rules adequately allow for isolated releases to be addressed. This information has been provided to RRD staff and will be considered a part of relevant project reviews. The MDEQ will prepare a Q&A article for a future RRD Newsletter conveying to stakeholders the options for resolving isolated releases. The article will include general guidance on what the MDEQ will consider in deciding on the need for action for the remainder of the facility.

Recommendations 65 - 69 (Final Report pages 27-29)

The MDEQ should modify the vapor intrusion to indoor air pathway. Modifications that can be made without statutory or rule changes should be considered through a peer review/stakeholders process.

RRD is using soil gas sampling where existing generic groundwater criteria do not apply. Draft soil gas sampling flowcharts include an assessment of whether the generic criteria are applicable, whether the Johnson & Ettinger Model can be used to calculate facility-specific criteria, and whether a site-specific evaluation of the vapor intrusion pathway is necessary. The RRD presented the flowcharts at the June 2007 RRD Cleanup Criteria Training. The MDEQ will prepare a draft Technical Support Document (TSD) addressing the generic groundwater venting to indoor air and soils venting to indoor air criteria application, and will revise the Soil Gas and Indoor Air Sampling guidance (Operational Memorandum No. 4, Attachment 4), including the flowcharts for decision making. The MDEQ will use an external peer review process to solicit comments on the TSD and Operational Memorandum documents.

Recommendations 80 and 81 (Final Report page 33)

Retain both the causation and the joint and several liability standards.

The MDEQ concurs with retaining the causation and joint and several liability standards. However, the MDEQ will pursue improvements suggested by stakeholders that will increase program efficiency by addressing some of the challenges of the causation standard. For examples, see the responses to Recommendations 86, 87, and 89.

**RECOMMENDATIONS THAT CAN BE IMPLEMENTED
WITH LIMITED LEGISLATION CHANGE**

Legislation that partially or completely addresses Brownfield Subgroup recommendations 16, 17, 20-24, 28-32, and 39, has been introduced. These recommendations are summarized below with the corresponding legislative bill numbers in parentheses. The MDEQ did not request introduction of this legislation and it occurred without further stakeholder input; however, stakeholder input is occurring as part of the legislative process. The MDEQ will evaluate the need for further legislation, and a stakeholder process, upon conclusion of the current legislative process.

Recommendation 16 (Final Report page 12)

The state should eliminate the December 31, 2007, sunset on the approval of work plans for school tax capture under the Brownfield Redevelopment Financing Act (amends PA 381, Section 15(1)(a)). (House Bill 4711 and 4712 and Senate Bill 537 and 538)

Recommendation 17 (Final Report page 12)

The state should authorize continuation of the Brownfield Tax Credits within the expiring Single Business Tax (SBT) and institute an equivalent tax credit in the replacement business tax structure. This should include a preservation and transfer of all SBT credits with pre-approval letters issued on or before December 21, 2007, in a manner that allows a similar credit to be claimed against a replacement business tax of general application, subject to most of the limitations currently contained in PA 382 (e.g. five- or ten-year completions deadline and ten-year carry forward).

This recommendation was completed with passage of the Michigan Business Tax (MBT) in Public Act 36 of 2007 and is effective on January 1, 2008. The Brownfield Credit in the MBT is identical to that found in the current SBT program and is available until 2013.

Recommendation 20 (Final Report page 13)

All reasonable costs for preparation and administration of brownfield plans and work plans should be considered eligible activity costs or otherwise eligible for reimbursement under a brownfield plan, whether performed by environmental consulting firms, law firms, or others. (House Bill 4713 and Senate Bill 534)

Recommendation 21 (Final Report page 13)

Allow demolition and asbestos/lead abatement as eligible activities for facilities and blighted or functionally obsolete properties in non-core communities (amends PA 381, Section 2(m)). (House Bill 4713 and Senate Bill 534)

Recommendation 22 (Final Report page 13)

Raise the local dollar limit for a Brownfield Redevelopment Authority (BRA) annual administrative costs to allow more flexibility (amends PA 381, Section 13(16)(a)). (House Bill 4712 and Senate Bill 537)

Recommendation 23 (Final Report page 13)

Allow for the relocation of public buildings or operations for economic development purposes without prior approval of the MEGA if the project is not requesting school tax capture for that specific activity (amends PA 381, Section 2(m)(v)). (House Bill 4713 and Senate Bill 534)

Recommendation 24 (Final Report page 13)

Clarify and streamline the approval of brownfield plans that includes more than one parcel allowing incorporation of adjacent and contiguous properties. Delete the requirement that MEGA approve local tax capture for adjacent and contiguous properties (amends PA 381, Section 13(15)). (House Bill 4712 and Senate Bill 537)

Recommendation 28 (Final Report page 14)

The MDEQ should consider incentives and approval of additional response activities in a work plan if such activities are necessary to clean up a property to a level (up to and including "generic residential" status) to reduce long-term Part 201 due care obligations and create additional environmental benefits. (House Bill 4711 and Senate Bill 538)

The MDEQ has already begun approving the use of school taxes for response activities that achieve generic residential criteria for single-family residential developments.

Recommendation 29 (Final Report page 14)

Allow the discretionary use of local tax capture for reimbursement of site investigation, baseline environmental assessments (BEAs), and due care activities that have occurred before the adoption of the brownfield plan. (House Bill 4712 and Senate Bill 537)

Recommendation 30 (Final Report page 14)

Upon approval of a brownfield plan, allow the use of school tax capture without PA 381 approval for site investigation activities necessary to conduct a BEA (or new process for establishing liability protection under Part 201), evaluation of due care, and preparation of a BEA report and a due care plan. This does not include construction/implementation of BEA/due care measures (amends PA 381 Section 13(16)(b)). (House Bill 4711, not included in the Senate bills)

Recommendation 31 (Final Report page 14)

Reduce the public notification requirement to once in a newspaper of general circulation designated by the municipality, which is not less than ten days before the date set for the hearing (amends PA 381 Section 13(10)). (House Bill 4712, not included in the Senate bills)

Recommendation 32 (Final Report page 14)

Expand the notification requirements of the BRA to include the MDEQ when a brownfield plan includes capture of taxes levied for school operating purposes to use for BEA, due care, or additional response activities and/or MEDC when the brownfield plan includes activities that must be approved by MEGA (amends PA 381, Section 13(13)). (House Bill 4712, not included in the Senate bills)

Recommendation 39 (Final Report page 16)

Modify Section 15(4) of Act 381 that requires the MDEQ to consider the sufficiency, necessity, and reasonableness of cost for individual activities. Instead, clarify that the MDEQ responsibility for work plan review is to ensure the proposed activities protect public health, safety, welfare, and the environment. If a work plan proposes response activity that goes beyond the minimum necessary to comply with applicable Part 201 and Part 213 requirements, the applicable additional expenses may be approved as eligible activities to be paid for with captured school operating taxes if the MDEQ determines those additional expenses provide meaningful environment or public health benefit (including reducing long-term obligations) at a reasonable cost. (House Bill 4711, not included in the Senate bills.) Express clearly that the financial risk associated with ensuring that the work performed is an eligible activity is on the person seeking reimbursement for "eligible activities," so that the MDEQ approval of a work plan does not imply an entitlement to reimbursement for eligible activities. (Senate Bill 538, not included in the House bills)

Additional legislation is necessary for the following recommendations:

Recommendations 59 and 60 (Final Report pages 22-24)

The MDEQ should consider promulgating a Part 201 rule that establishes a groundwater surface water interface (GSI) cleanup criterion of 10 parts per trillion (ppt) for mercury, along with a requirement for mercury pollution minimization. The MDEQ should develop a process under Part 201 that allows for site-specific bioaccumulation factors (BAFs) to be used in determining GSI criterion for mercury.

The MDEQ does not concur with the recommendations as proposed and believes they are inconsistent with Part 31⁴ and the Part 31 water quality standards. The current multi-discharge variance for mercury of 10 ppt is based on the level currently achievable by 42 of the 45 NPDES permitted dischargers that have mercury requirements; it does not represent a risk-based determination that would be appropriate as a risk-based criterion. The current multiple-

⁴ Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended

discharge variance is under review and future variances will likely be issued with determinations of site-specific levels currently achievable. In addition, a rule change is not necessary since the MDEQ believes that the Part 31 variance provision (R 323.1103) can be implemented through an approved RAP or Corrective Action Plan (CAP). We will define the circumstances under which it may be practical to develop a site-specific BAFs to modify the mercury water quality standard.

Recommendations 63 and 64 (Final Report pages 26-27)

The number of land use categories should be reduced to two categories, generic residential (or unrestricted) and non-residential (or restricted).

The MDEQ will evaluate in FY 2008 the actions necessary to accomplish this recommendation. While this recommendation appears simple to implement, the statutory provision involved is intricately linked with other statutory and rule provisions. The MDEQ must evaluate whether these recommendations can be implemented prior to comprehensive program changes. The MDEQ will evaluate the need for a stakeholder process after assessing how this recommendation would be implemented.

Recommendation 79 (Final Report page 33)

Clarify the legal definition of owners/operators so that persons who purchase units in subdivisions and condominiums do not have cleanup and due care obligations for common elements beyond their control.

The MDEQ agrees that the application of the Part 201 terms owner/operator to property interests under Michigan's condominium and subdivision law has created difficult and unintended consequences. However, after the Part 201 Discussion Group meetings, stakeholders suggested that the necessary changes would also need to address who would bear the burden of Part 201 obligations for common elements. The MDEQ will initiate a stakeholder process in the second quarter of FY 2008 to address these issues.

Recommendation 82 (Final Report pages 33-34)

Clarify the contribution standard.

The MDEQ concurs with this recommendation, but judicial decisions since the Final Report may affect this issue. A stakeholder process will be initiated in FY 2008 to develop a legislative proposal.

Recommendation 83 (Final Report page 34)

Revise the statute of limitations language within Part 201.

The MDEQ agrees with this recommendation and is developing alternative legislative language. The goal is to preserve the state's claims while striving for judicial clarification in line with statutory provisions. The MDEQ will be initiating stakeholder discussions during the second quarter of FY 2008.

Recommendation 86 (Final Report page 34)

Expand MDEQ information request authority to include access to corporate information documents, ownership, or business structure records where relevant for determining the chain of liable parties.

The MDEQ agrees that an expanded information gathering authority will help offset the enforcement difficulties created by the causation standard. The MDEQ intends to develop proposed legislative amendments during FY 2008 to implement this recommendation.

Recommendation 87 (Final Report page 34)

Develop a definition of "bona fide prospective purchaser" that assures new owners/operators seeking liability protection under Part 201 are unaffiliated with liable, previous owners/operators.

The MDEQ agrees with this recommendation. Liable parties have often formed new corporations, submitted BEAs and continued to operate at facilities under new names without addressing past responsibilities. The MDEQ intends to develop proposed legislative amendments to Part 201 that are consistent with the "no affiliation" language in the Comprehensive Environmental Response, Compensation, and Liability Act during FY 2008.

Recommendation 97 (Final Report pages 35-36)

The Uniform Environmental Covenants Act currently before the Michigan Legislature is endorsed.

The MDEQ endorses the concept behind the Uniform Environmental Covenants Act bill (Senate Bill 201) currently before the Michigan Legislature. The bill sponsors have convened a stakeholder process. The MDEQ is participating in that process and has proposed changes to the draft legislation to apply the requirements of the Act more uniformly.

RECOMMENDATIONS THAT REQUIRE ADDITIONAL DISCUSSION AND EFFORT TO BETTER DEVELOP AND DEFINE THE RECOMMENDATION, REQUIRE SIGNIFICANT LEGISLATIVE CHANGE TO IMPLEMENT, OR REQUIRE RESOURCES AND STAFF EFFORT THAT CANNOT BE SUPPORTED AT THIS TIME

Recommendations 5 - 7, 84, 100, and 101 (Final Report pages 9-10, 34, 36)

Create incentives to encourage source removal such as a Below Market Rate Loan Program and Tax Credits. Incentives may encourage source removal by creating a tool that is sensitive to the budget or operational philosophy of a business. Removing the source of contamination early in the cleanup process provides the most effective protection for public health and may be the most cost-effective response tool in the long run. Development of a common definition of source, source removal and source control is necessary to implement these incentive programs.

The MDEQ agrees that it is essential to conduct source removal and treatment to improve the timeliness of cleanups and to reduce the overall long-term cost of cleanups. The MDEQ also believes it is important to explore the development of financial and non-financial incentives for source removal and treatment. Developing and implementing the source removal and treatment incentives needs to be done within the context of comprehensive changes to the cleanup program that will likely affect both Part 201 and Part 213 sites.

Recommendations 9, 77, 78, and 93 (Final Report pages 10, 32-33, 35)

A permit or license-based regulatory structure for cleanup and redevelopment should be examined.

The MDEQ agrees that the concept of a permit or license-based regulatory structure should be examined for its potential to streamline the Part 201 program. The basis for MDEQ approvals could take the form of a certificate of occupancy for non-labile parties and voluntary agreements for liable parties. Due to the significant change that these recommendations represent, it will take substantial time to develop a complete design for this concept. The MDEQ will prepare a straw man proposal with the intent to initiate the stakeholder process after the second quarter of FY 2008.

Recommendation 11 (Final Report page 10)

Map the current Part 201 administrative process including any changes instituted as a result of the Final Report to locate the current inefficiencies and direct resources for improvements.

Activities currently underway (e.g., training, checklist, scoping meetings, and reduction in program complexity) will eventually result in improvements in the administrative process. A stakeholder process will be convened to examine this issue further after implementation of these improvements. Use of a system like Value Stream Mapping or Lean Processing may provide valuable direction on how to make the Part 201 process more efficient.

Recommendation 13 (Final Report page 11)

Remove the site scoring requirement from the statute because there appears to be little value returned for the program investment.

The MDEQ will evaluate in FY 2008 removing the scoring requirements separate from comprehensive program changes and the need to provide an alternative to site scoring to describe the relative risks of a site. The MDEQ will continue to use the current selection and prioritization factors for consideration of sites for state funding until changes are adopted. The MDEQ will continue to make information regarding all Part 201 and Part 213 sites available on the MDEQ/RRD web page, and on request.

Recommendations 14 and 15 (Final Report page 11)

Continue to measure and report specific agency activities to the public to assist in making the business case for securing program resources. Consider developing metrics for a reporting system that evaluates program performance and risk reduction. Suggested metrics can be found in Appendix G.

The MDEQ will continue current program performance reporting and make the reports available to the public. However, since implementation of the Final Report recommendations will result in many changes to the cleanup program, the MDEQ will reevaluate the need for modified reporting after the changes have been implemented.

Recommendation 27 (Final Report page 14)

To enhance the policy objective of directing development investment toward urban centers, some of the current core community redevelopment incentives should be expanded to include other developed urbanized areas while simultaneously increasing the dollar value of redevelopment incentives for the core communities.

Brownfield legislation introduced in the House and Senate proposes to expand eligible activities to include demolition and lead/asbestos abatement statewide in response to Recommendation 21. If House Bill 4713 and Senate Bill 534 are enacted, additional incentives would be necessary to continue the policy of directing redevelopment investment to urban core areas. Further stakeholder input is needed to evaluate options for addressing this recommendation after the fate of the current legislation is clear.

Recommendations 61 and 62 (Final Report pages 25-26)

Address conservativeness in decision making caused by Section 20114(8) "One bite of the apple" provision.

This provision requires any denial for any plan to include a complete and specific statement of the conditions or requirements necessary to obtain approval. The MDEQ acknowledges that this provision requires a high level of conservatism. Further evaluation of the conflict between the regulated communities need for finality and certainty and the MDEQ's charge to ensure response actions protect public health, safety, welfare and the environment is necessary to resolve this issue. The MDEQ's obligation to ensure that response costs are not imposed on

the public except when the liable party does not have the financial resources or ability to undertake response actions must also be considered. Further stakeholder input is needed to evaluate options to address these concerns. This discussion should occur in the context of comprehensive program redesign.

Recommendations 65 - 70 (Final Report pages 27-30)

Update the vapor intrusion to indoor air pathway. MDEQ proposed changes requiring rule modifications should be the basis for a peer review/stakeholders process.

The MDEQ will draft changes to update the vapor intrusion to indoor air pathway in FY 2008, followed by further stakeholder process and subsequent legislative action.

Recommendations 71 - 76, and 91 (Final Report pages 31-32, 35)

Replace the BEA process with a requirement to complete and comply with a due care plan as the basis for achieving liability protection.

The MDEQ agrees with this concept but it will require additional stakeholder discussions and legislative action. The MDEQ believes that this change holds much promise for creating a liability protection process that protects innocent purchasers while achieving greater levels of public health and environmental protection. The MDEQ will develop suggested legislative changes to implement this recommendation during the second quarter of FY 2008 for consideration in a subsequent stakeholder process.

Recommendations 85, 88, and 94 (Final Report pages 34-35)

Include clear remediation benchmarks for reporting and disclosure of self-implemented compliance. Create authority for the MDEQ to levy administrative penalties similar to Part 213.

Section 20114 of Part 201 contains affirmative obligations for certain parties yet does not require the reporting of progress or specified timeframes for compliance with all obligations. This omission confuses the regulated community and frustrates MDEQ enforcement efforts. The MDEQ agrees that clearly defined compliance benchmarks would aid the program and that these could be defined in terms of timeframes and deliverables to the MDEQ similar to those required in the Leaking Underground Storage Tank program. Likewise, creating authority for the MDEQ to levy administrative penalties for noncompliance with established benchmarks would provide the basis for a predictable and more efficient enforcement program. The MDEQ will develop a proposal in the second quarter of FY 2008 for consideration in a subsequent stakeholder process.

Recommendation 89 (Final Report page 35)

Consider adopting a rebuttable presumption of liability for pre-June 1995 owners/operators at sites where it can be shown that the contaminants or processes used were the same as those that contributed to the contamination found at the site.

The MDEQ invests substantial resources in sites where releases occurred decades ago and where multiple owners claim that no releases occurred during their tenure. The causation standard, while providing great benefits to new purchasers, has become an obstacle to enforcement that diverts the MDEQ limited resources from environmental protection to environmental forensics. A rebuttable presumption of liability for legacy facilities would be a useful tool in offsetting the difficulties created by the causation standard. The MDEQ will develop proposed language during FY 2008 for consideration in a subsequent stakeholder process.

Recommendations 90, 92, and 95 (Final Report page 35)

Develop an electronic reporting system for notification of releases and submission of due care plans.

The MDEQ automates its information gathering and dissemination functions whenever possible and will continue to do so as limited resources allow. These recommendations would become especially important if Recommendations 71-76 emphasizing due care are implemented.

Recommendation 96 (Final Report pages 35-36)

Obligations related to land use or activity restrictions must be funded through tools such as financial assurance mechanisms to be fully protective.

The MDEQ agrees that obligations related to land use or activity restrictions must be funded to be fully protective and requires such funding as specified by rule. However, the long-term costs associated with monitoring administrative exposure control mechanisms, such as local ordinances, have not traditionally been included in this requirement. Due to a lack of consensus regarding who should bear these long-term costs, the MDEQ will seek additional stakeholder input as part of comprehensive program changes.

RECOMMENDATIONS WHICH THE DEPARTMENT CANNOT AGREE ARE APPROPRIATE FOR IMPLEMENTATION AS PRESENTED, OR REQUIRE FURTHER REVIEW

Recommendations 8 and 10 (Final Report page 10)

The MDEQ should develop ways to expedite source removal activities and reduce the need for the agency to pre-approve other specific aspects of response actions through use of a general permit process, a fast track process, and/or exemptions. See Appendix E of the Final Report for more details.

The MDEQ agrees that source removal activities and cleaning up sites of contamination as quickly as possible are desirable to protect public health and the environment. However, the MDEQ must give considerable thought to properly revising the permit laws and rules without compromising the resource and public health protections provided for by the permit process. Since laws other than Part 201 are involved, changes of this nature will take extensive discussion among regulators and changes in state and perhaps federal rules and laws. In the case of non-emergencies, the MDEQ believes pre-approvals are prudent and necessary. There may be ways to streamline the process and the MDEQ will explore the idea of general permits and exemptions as resources allow.

Recommendation 12 (Final Report pages 10-11)

To provide for more timely reviews and approvals of work plans, interim response action plans, or RAPs the MDEQ should offer the option of using the services of a third party professional to assist in the performance of technical reviews at the cost of the party proposing the work.

The MDEQ does not support this recommendation. The MDEQ public trust responsibility for Michigan's resources cannot be delegated. The RRD has had extensive experience with the Part 213 Qualified Consultant process and with Project Management Contracts. This experience demonstrates that third party reviews are not more efficient, do not adequately protect the public health and the environment, and cannot fulfill regulatory responsibilities. Project Management Contracts have proven to be an expensive option that still requires a large amount of staff oversight. The state would benefit far more from implementation of the other stakeholder recommendations which reduce complexity and increase efficiency.

Recommendation 19 (Final Report page 13)

Modify the Act 381 definition of "eligible property" to include "qualified agricultural property" if the property would have been determined to be a Part 201 "facility," the property or adjacent or contiguous property is served by municipal water and sewer infrastructure; and the property is included in a master plan and zoned to permit residential, commercial, or industrial use. (Senate Bill 534, not included in the House bills)

This recommendation is inconsistent with the intent of Act 381, which is to assist the redevelopment of blighted industrial and commercial areas. In addition, this recommendation is in conflict with the recommendations of the Land Use Leadership Council.

Recommendations 35 - 38 (Final Report pages 14-16)

The Governor should establish an Office of Brownfield Redevelopment to coordinate and streamline all agency programs to support and facilitate the completion of Michigan's brownfield redevelopment projects. The state should create a unified brownfield redevelopment preliminary application that could be used by all state agencies and local units of government for brownfield-related program incentives, grants, and loans (business tax credits, notice of intent, PA 381 work plans, brownfield grants and loans, etc.).

The MDEQ believes that there is currently excellent communication and coordination of brownfield functions in state government. Formation of a new office would consume resources that can better be used for service delivery within the existing organizational structure. The concept of a unified brownfield application has merit but should be developed for use in the existing structure.

Recommendation 40 (Final Report page 16)

In light of the total brownfield recommendations, seriously consider amending Section 15(3) of PA 381 to reduce the 60-day timeframe for review of work plans.

House Bill 4711 specifies a new review period for MDEQ response following receipt of additional information. This may be sufficient to address the recommendation.

Recommendation 98 (Final Report page 36)

Historic, liable owners/operators that have conducted a cleanup meeting the generic criteria for the land use as zoned at the time of cleanup should be released.

The MDEQ does not support this recommendation. The simplicity of the recommendation does not account for the complexity of conditions related to unknown conditions and changes in land use. This recommendation unacceptably shifts costs to future innocent landowners and to the public in general.

Recommendation 99 (Final Report page 36)

Owners/operators should be released from liability with as few conditions as possible when cleanup is implemented and re-openers must be clearly defined.

Issues of finality and complexity are both inherent in the risk-based closure approach of Part 201. The MDEQ does not believe that liable parties should be absolved from responsibility for the contamination that can be left on-site under generic criteria. The MDEQ cannot support the release of liable parties and their obligations for long-term management of risks without dedicated funding to carry out those obligations. The MDEQ remains open to creative ideas for balancing all interests involved yet will resist measures that transfer costs to non-liable landowners or the public in general in favor of finality for liable parties.

**RECOMMENDATIONS TO BE REFERRED TO OTHER AGENCIES FOR REVIEW AND
ACTION AS MAY BE APPROPRIATE**

Recommendation 33 (Final Report page 14)

Allow qualified taxpayers to claim a refundable tax credit at a discounted rate when they receive a Certificate of Completion.

This is not included in the new MBT. MEDC staff support this recommendation and will seek an amendment in FY 2008.

Recommendation 34 (Final Report page 14)

The MEGA Board should adopt a more simplified process and form for approval of "mini" SBT/MBT credits (\$200,000 or less) and without the need for a public hearing to approve changes to the mini credit form.

MEDC staff and the MEGA Board will be evaluating the feasibility of simplification to the mini credit process and amendments that would be necessary to the MBT legislation. Additional stakeholder discussions will occur as needed.

Recommendations 41 and 42 (Final Report pages 16-17)

Allow the approval of a work plan for school tax capture to provide two mills of the captured State Education Tax to be used to support the administration of the state's brownfield programs (up to one mill) and the MDEQ Brownfield Redevelopment Grant and Loan Program (not less than one mill). Allow the diversion of a certain percentage of local tax capture to be placed in the local site remediation revolving fund provided that there is no net fiscal impact to school tax capture (amends PA 381 Section 13(5)).

The MDEQ has referred these recommendations to the Department of Treasury due to the potential impact on the state budget, particularly the school aid fund.

IMPLEMENTATION MATRIX: PART 201 DISCUSSION GROUP RECOMMENDATIONS

Key

Q2/08 = Tentative quarter/fiscal year for initiation of implementation

≥ = During or later than

I = Initiated

C = Completed

X = Cannot agree appropriate to implement

Can be implemented with available administrative authority

Can be implemented with limited legislative change

Requires additional stakeholder process, significant legislative change, or unavailable resources and staff effort

Cannot agree appropriate to implement as presented, requires further review or resources

Refer to other Agency

Administration Subgroup Recommendations

1. Use the comprehensive checklist	I				
2. Allow early scoping meetings	I				
3. Support quality-control efforts for consistent MDEQ decision making	I				
4. No recommendation could be reached for revised definition of facility	-	-	-	-	-
5. Common definition of source and source control			≥Q3/08		
6. Low-interest (below market rate) loan program for source control			≥Q3/08		
7. Tax-credit incentives for source control			≥Q3/08		
8. Expedite source control using general permit process, a fast track process or exemptions				≥Q3/08	
9. Consider a permit-based system			≥Q3/08		
10. Streamline the administrative process through a general permit process, a fast track process, and/or exemptions				≥Q3/08	
11. Map the current Part 201 administrative process			≥Q3/08		
12. Offer the option of using the services of a third party professional to assist in the performance of technical reviews				≥Q3/08	
13. The requirement for site scoring should be removed from the statute			≥Q3/08		
14. Continue to measure agency performance and report to public	I		≥Q3/08		
15. Invite outside entity to evaluate risk reduction aspects of program			≥Q3/08		

Brownfield Subgroup Recommendations

16. Reauthorize the Brownfield Redevelopment Financing Act (Act 381)		I			
17. Continue Authorization of Brownfield Tax Credits in any Single Business Tax replacement structure		C			
18. Convene a workgroup of state agencies, legislators, municipalities, to develop legislation for recommendations	I				
19. Modify the definition of eligible property to include qualified agricultural property				X	
20. Amend Act 381 so all reasonable costs for preparation and administration of brownfield plans and work plans are eligible activity costs or otherwise eligible for reimbursement		I			
21. Amend Act 381 to allow demolition and asbestos/lead abatement as eligible activities for facilities and blighted or functionally obsolete properties in non-core communities		I			
22. Amend Act 381 to raise the dollar limit for Brownfield Redevelopment Authority (BRA) annual administration costs		I			
23. Amend Act 381 to allow for relocation of public buildings or operations for economic development purposes without prior approval of Michigan Economic Growth Authority (MEGA) if school tax capture is not request for the activity		I			
24. Amend Act 381 to delete MEGA Board approval of local tax capture for adjacent and contiguous properties and clarify and streamline the approval of brownfield plans for such proposals		I			

Key

Q2/08 = Tentative quarter/fiscal year for initiation of implementation

≥ = During or later than

I = Initiated

C = Completed

X = Cannot agree appropriate to implement

	Can be implemented with available administrative authority	Can be implemented with limited legislative change	Requires additional stakeholder process, significant legislative action, or unavailable resources and staff effort	Cannot agree appropriate to implement as presented, requires further review or resources	Refer to other Agency
25. MDEQ should define a reasonable rate of interest as an eligible expense and define when it would be an eligible activity	I				
26. MEGA Board with Treasury and MDEQ should define a reasonable rate of interest as an eligible expense and define when it would be an eligible activity					I
27. Some of the current core community redevelopment incentives should be expanded to other areas while increasing the dollar value of incentives for core communities			≥ Q3/08		
28. DEQ should consider incentives and approval of additional response activities necessary to reduce long-term due care obligations and create additional environmental benefits	I				
29. Amend Act 381 to allow the use of local tax capture for reimbursement of site investigation, Baseline Environmental Assessment (BEA)/due care activities that occur prior to adoption of the brownfield plan		I			
30. Amend Act 381 to allow use of school tax capture upon approval of a brownfield plan without PA 381 approval for activities to conduct a BEA, evaluate due care and prepare BEA and due care plan		I			
31. Amend Act 381 to revise the public notification requirements		I			
32. Amend Act 381 to revise the notification requirements of the BRA		I			
33. Allow qualified taxpayers to claim a refundable tax credit as a discounted rate when they receive a Certification of Completion					C
34. MEGA Board should adopt a more simplified process and form for approval of "mini credits"					C
35. Establish Office of Brownfield Redevelopment				X	
36. to 38. Create a unified brownfield redevelopment application				X	
39. Modify Act 381 language regarding MDEQ approvals		I			
40. Consider reducing Act 381 time frame for MDEQ review				X	
41. Allow school tax capture to provide 2 mills to be used to support the administration of the state's brownfield programs and MDEQ brownfield grants/loans					C
42. Allow the diversion of certain % of local tax capture to be placed in local revolving fund					C
Complexity Subgroup Recommendations					
43. to 49. Employ a comprehensive checklist intended to assist in documenting status, guiding progress and helping to determine the necessary response activities	I				
50. Allow a mixing zone where venting groundwater enters a NPDES permitted storm sewer	C				
51. to 55. Develop a model used to determine whether a utility corridor poses an unacceptable risk for Groundwater Surface Water Interface (GSI)			Q1/08		
56. to 58. Develop a policy on isolated releases to clarify when an isolated spill may be remediated without involving the rest of the property	C				

Key
Q2/08 = Tentative quarter/fiscal year for initiation of implementation
≥ = During or later than
I = Initiated
C = Completed
X = Cannot agree appropriate to implement

	Can be implemented with available administrative authority	Can be implemented with limited legislative change	Requires additional stakeholder process, significant legislative action, or unavailable resources and staff effort	Cannot agree appropriate to implement as presented, requires further review or resources	Refer to other Agency
59. Develop a Part 201 rule to establish a mercury GSI criterion of 10 parts per trillion (ppt)		Q1/08			
60. Clarify a process to allow for site-specific bioaccumulation factors to be used in determining GSI criterion for mercury		Q1/08			
61. to 62. Address conservativeness in decision making (Section 20114(8) "One bite at the apple")			≥ Q3/08		
63. to 64. Reduce the number of Part 201 land use categories		≥ Q3/08			
65. to 70. Update the vapor intrusion to indoor air pathway	Q2/08		≥ Q3/08 (criteria)		
Liability Subgroup Recommendations					
71. to 76. Replace the BEA with a requirement to complete a due care plan as the basis for liability protection from legacy contamination			≥ Q3/08		
77. A permit or license based regulatory structure should be examined by the MDEQ			≥ Q3/08		
78. The permit or license concept should be applied in the form of due care certification for nonliable owners/operators			≥ Q3/08		
79. Clarify the legal definition of owners/operators of common property		Q2/08			
80. Retain the causation-based liability standard	I				
81. Retain the joint and several liability standard	I				
82. Clarify the contribution standard to allow any party that has incurred remediation costs under Part 201 to proceed against any party who is or may be liable			Q2/08		
83. The statute of limitations must be revised			Q2/08		
84. Develop incentives for source removal			≥ Q3/08		
85. Create authority for administrative penalties			≥ Q3/08		
86. Expand MDEQ information request authority		≥ Q3/08			
87. Develop definition of "bona fide prospective purchaser" that assures new owners/operators are unaffiliated with previous liable owners		Q2/08			
88. Define nonperformance, especially terms of "diligent pursuit and adequate characterization"			≥ Q3/08		
89. Consider adopting a rebuttable presumption of liability against historic owners/operators where contaminants or processes used were the same as those found at the site			≥ Q3/08		
90. Develop ongoing site monitoring and documentation requirements to minimize public health impacts			≥ Q3/08		
91. Liability protection requirements for due care compliance monitoring			≥ Q3/08		
92. Facility must be defined for the purpose of mandatory reporting			≥ Q3/08		
93. Disclosing site information to the MDEQ should be an essential consideration for any permit process adopted in the future			≥ Q3/08		
94. Include clear remediation benchmarks in requirements for reporting and disclosure of self-implemented compliance			≥ Q3/08		
95. Develop an electronic reporting system for notification of releases and submission of due care plans			≥ Q3/08		
96. Land use or activity restrictions must be funded to be fully protective			≥ Q3/08		

<p>Key Q2/08 = Tentative quarter/fiscal year for initiation of implementation ≥ = During or later than I = Initiated C = Completed X = Cannot agree appropriate to implement</p>	Can be implemented with available administrative authority	Can be implemented with limited legislative change	Requires additional stakeholder process, significant legislative action, or unavailable resources and staff effort	Cannot agree appropriate to implement as presented, requires further review or resources	Refer to other Agency
97. Uniform Environmental Covenants Act is endorsed		Q1/08			
98. Historic, liable owners/operators that have conducted a cleanup meeting generic criteria for the zoned land use at the time of the cleanup should be released				≥ Q3/08	
99. The release of owners/operators should have as few conditions as possible and re-openers must be clearly defined				≥ Q3/08	
100. The recommendation for reducing the number of site categories should be adopted			≥ Q3/08		
101. Incentives for source removal or control should be developed			≥ Q3/08		